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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/098,603	03/15/2002	Franco Zobebe		7735

7590 06/24/2005

c/o YOUNG & THOMPSON  
SUITE 200  
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ARLINGTON, VA 22202

EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT PAPER NUMBER

1744

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/098,603

Applicant(s)

ZOBELA ET AL.

Examiner

Krisanne Jastrzab

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1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/16/2002.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Priority*

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 112***

Claims 3 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms "low" and "hot" in claims 3 and 12, respectively, are relative terms which render the claims indefinite. The terms "low" and "hot" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shafe et al., U.S. patent No. 5,181,006.

Shafe et al., teach the manufacture of a resistive heating device having a substrate that is held to be capable of absorbing a solution of an active agent. The

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resistive coating is applied by screen printing or spraying and is then thermally cured, by means including irradiation. See column 5, lines 19-60.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-9 and 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al., U.S. patent No. 5,647,053 in view of Abbott et al., U.S. patent No. 6,762,396 B2 and Shafe et al., U.S. patent No. 5,181,006.

Schroeder et al., teach an electrically heated fragrance vaporizer providing a refill container holding an active agent to be vaporized. The container cooperatively holding a wick means which is surrounded by a resistive heating element at a certain portion thereof. The resistive heating element is operatively coupled by tab means to an electrical plug adapted to be plugged into a conventional household outlet. The wick means can be formed from a variety of different materials including ceramics, plastics, and glass fibers. See column 3.

Abbott et al., resistive coatings applicable in a plurality of laboratory and household devices requiring heat generation. The resistive coating is preferably applied with two different materials, one having a low resistivity and the other being insulative for optimum temperature control. Application of the resistive coating directly to the substrate to be heated offers intimate contact for optimized heat transfer. The substrates can be materials including ceramic, plastic and carbon fiber. It is preferred that application of the coating be in a non-uniform pattern. See column 3, lines 38-43 and lines 60-68, column 5, lines 22-25, column 7, lines 8-10, column 9, lines 30-45 and claim 3.

Shafe et al., teach also teach resistive heating with coating layers, with the preferred coating be layers of graphite-based ink offering low resistivity. The ink is applied to the substrate with screen-printing or painting and is cured thermally. The

substrate can be either rigid or flexible and these coated layers offer good resistance stability and flexibility.

It would have been obvious to one of ordinary skill in the art to substitute the heating element of Schroeder et al., with a resistive coating applied directly to the wick as taught in Abbott et al., and Shafe et al., because it would provide intimate contact between the heating means and the wick to optimize fragrance vaporization. It would also minimize the bulk of the body of the device, by eliminating the molded resistive element and employing the plug pins of Schroeder et al., in contact with the resistive coating directly on the wick.

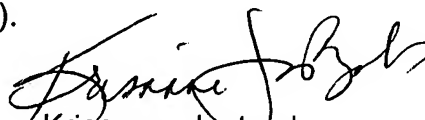
With respect to claims 9 and 18-19, shape of the substrate does not rise above mere design choice and both plate and ring-shaped fragrancing substrates are well recognized in the art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Krisanne Jastrzab  
Primary Examiner  
Art Unit 1744

June 22, 2005